

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

* * *

UNITED STATES OF AMERICA,
ex rel. ANDREW M. GARNER, III,
and ANDREW M. GARNER, III,
individually,
Plaintiffs,

vs. CASE NO. 1:00CV463

ANTHEM INSURANCE COMPANIES, VOLUME I
INC., et al.,
Defendants.

* * *

Deposition of THOMAS R. RASP, Witness
herein, called by the Plaintiff for
cross-examination pursuant to the Rules of Civil
Procedure, taken before me, Kathy S. Wysong, a
Notary Public in and for the State of Ohio, at the
offices of Sebaly, Shillito + Dyer, 1900 Kettering
Tower, Dayton, Ohio, on Friday, November 4, 2005,
at 9:09 a.m.

* * *

EXHIBIT

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1 A. It was -- under the original it was
 2 OPM owing to Anthem.
 3 Q. And that would have been seven
 4 hundred and forty-four thousand and five hundred
 5 and sixty-four dollars?
 6 A. That is correct.
 7 Q. And under the 04/05 submission the
 8 amount OPM owed to Anthem decreased to seven
 9 hundred and one thousand ninety-six dollars; is
 10 that correct?
 11 A. Yes.
 12 Q. And do you believe the information
 13 under the heading 04/05 submission to be accurate?
 14 A. Yes.
 15 Q. And if you could go back to the -- to
 16 Plaintiff's Exhibit 12. Do you have that handy?
 17 Under the original FEP 2003 true-up
 18 summary OPM owed Anthem four hundred and
 19 fifty-eight thousand six hundred and eighty-nine
 20 dollars; is that correct?
 21 A. Yes.
 22 Q. And under the revisions OPM -- the
 23 amount OPM owed increased to four hundred and
 24 ninety-five thousand two hundred and eighty-eight
 25 dollars; is that correct?

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1 A. Yes.
 2 Q. And would it be a fair statement that
 3 was -- that change was due in large part to the
 4 decrease in admin fees charged to the FEP business
 5 line under the 04/05 submission?
 6 A. No.
 7 Q. No?
 8 A. Not in the way I understood you
 9 stated it.
 10 Q. Do you have an opinion as to why the
 11 amount OPM -- the amount OPM owed to Anthem
 12 increased under the 04/05 submission?
 13 A. Because of the increase in the
 14 allocation percentage between the original and the
 15 04/05.
 16 Q. But isn't there about a fifty
 17 thousand dollar decrease in the admin fee charged
 18 to FEP business between the original --
 19 A. You are correct. I apologize on that
 20 one. I -- you got me on that.
 21 MR. DYER: Wait a minute. It will go
 22 to his head, Tom.
 23 THE WITNESS: It's a combination.
 24 Yes, you are correct.
 25 BY MR. KELLER:

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1 Q. I said in large part.
 2 A. Yes, you are correct. My apologies.
 3 Q. Mr. Rasp, the documents we've just
 4 reviewed, Plaintiff's Exhibits 13, 12, 9, 8, and
 5 11, involve situations where there have been --
 6 the necessity has arose to make several updates to
 7 the original FEP true-up summaries, correct?
 8 A. That is correct.
 9 Q. And the need for these revisions was
 10 basically, except for the one time that Anthem
 11 Midwest provided APM the wrong information, is --
 12 would it be fair to say was the inaccuracy of the
 13 original FEP true-up?
 14 A. Yes.
 15 Q. Okay. In your position in APM, does
 16 this cause you some concern?
 17 A. Yes.
 18 Q. And have you taken any steps or
 19 changed the way these FEP true-ups are put
 20 together -- are drafted since these recent
 21 problems have come to your attention?
 22 A. We're taking different steps, yes.
 23 The process, for the most part, is still -- will
 24 still be the same. We're going to ask more
 25 questions, try to go to different people, be a

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1 little more probing on some of the questions when
 2 we go back.
 3 Some of the changes that we're
 4 talking about from the original, questions were
 5 asked to different people for information but what
 6 we're asking is questions of the same people like
 7 us, accountants, accountants that don't have
 8 any -- we don't deal with the benefit design.
 9 We're not in that part of the area, okay.
 10 Q. Yes.
 11 A. So we're asking accountant to
 12 accountant. Well, we need to go further into
 13 that. We need to ask the business environment and
 14 ask the businesspeople some of the questions that
 15 arose from some of these things here.
 16 Q. Is there -- have you developed or are
 17 you attempting to develop revised written policies
 18 on how to approach the drafting of the FEP
 19 true-ups?
 20 A. Yes.
 21 Q. And are those complete at this point?
 22 A. There were drafts that were completed
 23 and forwarded on for review, again, at the
 24 internal Anthem FEP office.
 25 Q. Okay. Do you consider it a FEP issue

<p style="text-align: right;">Page 178</p> <p>1 or an APM issue or is there really no difference?</p> <p>2 A. The questions are asked and, yes,</p> <p>3 there are mistakes onto here; and, again, I think</p> <p>4 it's where we're asking the questions, we're</p> <p>5 doing -- we are doing a very good job of providing</p> <p>6 these true-ups. In the area where we did not have</p> <p>7 the mail order part of it in here, questions were</p> <p>8 asked, and, again, we're asking people that --</p> <p>9 within the FEP that are accountants that are</p> <p>10 responsible, again, for dealing with numbers that</p> <p>11 don't have the benefit information. So you could</p> <p>12 say that we errored. FEP errored because we asked</p> <p>13 the questions, we inquired. We inquired to the</p> <p>14 wrong people within there.</p> <p>15 There are errors -- there are</p> <p>16 mathematical errors in here where we pulled an</p> <p>17 incorrect number. We own those and we're going to</p> <p>18 own those, you know. In our review process, as</p> <p>19 you know, it's very difficult to go through every</p> <p>20 calculation to make sure; but we go through an</p> <p>21 effort to try to do our best to make sure that</p> <p>22 what we have in front of us is the right -- the</p> <p>23 right amount. And at that point in time it is</p> <p>24 what we believe to be the correct calculation and,</p> <p>25 yes, we have on further review found that we've</p>	<p style="text-align: right;">Page 180</p> <p>1 BY MR. KELLER:</p> <p>2 Q. If you have an opinion in that</p> <p>3 regard.</p> <p>4 MR. DYER: Objection. I think</p> <p>5 opinion testimony on that question is improper;</p> <p>6 but in any event, he's already answered so it's</p> <p>7 asked and answered.</p> <p>8 BY MR. KELLER:</p> <p>9 Q. Subject to the objection, if you have</p> <p>10 an opinion.</p> <p>11 A. I don't know what to answer from a</p> <p>12 legal -- what I'm --</p> <p>13 MR. DYER: You may answer the</p> <p>14 question if you understood the question; and if</p> <p>15 you want it read back, you can. My objections</p> <p>16 will stand and I will repeat them if it's read</p> <p>17 back. So if you need to know what you're</p> <p>18 answering, that's the main thing.</p> <p>19 THE WITNESS: Right.</p> <p>20 MR. DYER: You may answer but you</p> <p>21 need to have the question in mind. If you want it</p> <p>22 read back, you can.</p> <p>23 THE WITNESS: Please read it back.</p> <p>24 (Record read.)</p> <p>25 MR. DYER: Objections are repeated</p>
<p style="text-align: right;">Page 179</p> <p>1 had some errors, you are correct.</p> <p>2 MR. DYER: Just for the record, as he</p> <p>3 said it's difficult to go through every</p> <p>4 calculation, the witness grabbed Exhibit 9 and</p> <p>5 thumbed through the approximate seventy-five pages</p> <p>6 of backup documentation supporting that exhibit.</p> <p>7 BY MR. KELLER:</p> <p>8 Q. The Anthem Prescription Management as</p> <p>9 an entity was certainly aware that the HMP program</p> <p>10 involved prescription benefits beginning in 1999,</p> <p>11 correct?</p> <p>12 A. I don't know that I can answer that</p> <p>13 in 1999, that that -- that Anthem Prescription</p> <p>14 Management knew that. And by -- and to clarify a</p> <p>15 little bit, when membership comes into us, it's --</p> <p>16 it is a feed from Anthem Midwest. I don't have</p> <p>17 somebody that's sitting there saying, okay, who</p> <p>18 came on today, who left today, through that</p> <p>19 process to understand or know what membership has</p> <p>20 been added and eliminated.</p> <p>21 Q. Well, in your opinion, where did the</p> <p>22 ball get dropped as far as failing to include</p> <p>23 mail-in rebates to the FEP program beginning in</p> <p>24 1999?</p> <p>25 MR. DYER: Objection.</p>	<p style="text-align: right;">Page 181</p> <p>1 and you may answer.</p> <p>2 THE WITNESS: I believe I answered it</p> <p>3 when I said that I think that Anthem Prescription,</p> <p>4 myself, and the FEP have an equal blame within</p> <p>5 there for not taking it and probing further than</p> <p>6 what we did probe.</p> <p>7 BY MR. KELLER:</p> <p>8 Q. But are you aware of any process in</p> <p>9 place within APM where there's periodically a</p> <p>10 review of the benefits that are provided to the</p> <p>11 members of the respective plans that APM provides</p> <p>12 services to?</p> <p>13 A. Yes, there are -- there are those and</p> <p>14 there are probably people within APM, as there are</p> <p>15 probably people -- there have to be people within</p> <p>16 the FEP that know that there was a mail order</p> <p>17 benefit, okay. Those people don't know we're</p> <p>18 doing a true-up, what we're doing, how we're</p> <p>19 doing, why we're doing just as we didn't know to</p> <p>20 go back to those people to ask that question.</p> <p>21 Q. What -- is there -- if you know, what</p> <p>22 is the process by which the benefits provided to</p> <p>23 the respective plans are reviewed periodically?</p> <p>24 A. I don't know the specific answer to</p> <p>25 that. I'm not responsible for that type of --</p>

<p style="text-align: right;">Page 182</p> <p>1 Q. Do you know who has that 2 responsibility? 3 A. There are probably several people 4 within the organization that have that from 5 different -- different areas. Obviously the 6 benefits have to be loaded into our -- into our 7 systems. Some of that is automated now so there 8 may not be an APM person that touches it. There 9 are also areas that are -- or there are 10 individuals that do have accountability for client 11 management. I would have to believe that a client 12 manager would have known or should have known. 13 Q. In 1988, did word ever come to you -- 14 I'm sorry, in 1998, did word ever come to you that 15 mail-in rebates were not being properly credited? 16 A. No. 17 Q. Okay. Mr. Rasp, I'm handing you what 18 we've marked previously as Plaintiff's Exhibit 6, 19 and I'd like to ask you about the calculations in 20 regards to 1996. 21 A. Okay. 22 Q. And we discussed this document 23 previously and I think you indicated that you had 24 put this document together; is that correct? 25 A. That is correct.</p>	<p style="text-align: right;">Page 184</p> <p>1 returned to OPM? 2 MR. DYER: I believe that was asked 3 and answered earlier. 4 THE WITNESS: I do not remember. 5 BY MR. KELLER: 6 Q. Okay. In putting this information 7 together, did you run across anything that led you 8 to believe that this hundred and fifty-one 9 thousand six hundred and thirty-one dollars and 10 twenty-eight cents had been returned to OPM? 11 A. No. 12 Q. Okay. Do you have any information 13 about how rebates and true-ups were handled from 14 1992 through 1996? 15 A. Not specifics. Only what I would 16 believe would have happened. 17 Q. And let me -- I think I said '96. I 18 meant 1992 through 1995. 19 MR. DYER: I thought he testified 20 about '96 earlier. 21 MR. KELLER: Right. 22 THE WITNESS: Okay. 23 BY MR. KELLER: 24 Q. So, I'm sorry, I didn't mean to 25 interrupt you.</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. And that was done -- well, it was 2 printed on May 2nd, 2005, correct? 3 A. Yes. 4 Q. And I think you said it was probably 5 put together in or about that time; is that 6 accurate? 7 A. Yes. 8 Q. Based on your review, information at 9 your disposal, you determined that in 1996 10 fifty-seven thousand nine hundred and forty-two 11 dollars in rebates had previously been returned to 12 FEP; is that correct? 13 A. Through the monthly process, yes. 14 Q. Okay. And you further determined 15 that the amount of rebates that would have been 16 attributed to FEP were two hundred and nine 17 thousand five hundred and seventy-three dollars 18 and twenty-eight cents; is that correct? 19 A. Yes. 20 Q. So there was a -- there was -- the 21 amount allocable to FEP/HMP was a hundred and 22 fifty-one thousand six hundred and thirty-one 23 dollars twenty-eight cents; is that correct? 24 A. Yes. 25 Q. Do you know if that amount has been</p>	<p style="text-align: right;">Page 185</p> <p>1 A. I don't have -- I don't have -- how 2 can I say this? I have the belief that they were 3 done because of the processes that were in place 4 when I was in the corporate cost and budget area. 5 I do not have factual proof that the process was 6 done. 7 Q. Okay. Have you tried to do any 8 research or look to see if you could find any past 9 true-ups for '92 through '95 inclusive? 10 A. No, because in my current role, I'm 11 with APM and that's all the information I have 12 access to, which would have been when it became a 13 legal entity in 1995. 14 Q. Okay. Good point. Do you have an -- 15 let's see. That's -- prior to '95 you informed us 16 that there were prescription benefits that were 17 administered and it was done so as a division of 18 CMIC; is that correct? 19 A. That is correct. 20 Q. Okay. You were working for CMIC at 21 that time, correct? 22 A. Yes. 23 Q. Do you have any -- do you know who 24 would have been responsible for putting together 25 true-up summaries from 1992 through 1995 inclusive</p>

1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Kathy S. Wysong, a Notary Public within
4 and for the State of Ohio, duly commissioned and
5 qualified,

6 DO HEREBY CERTIFY that the above-named
7 THOMAS R. RASP, was by me first duly sworn to
8 testify the truth, the whole truth and nothing but
9 the truth; that said testimony was reduced to
10 writing by me stenographically in the presence of
11 the witness and thereafter reduced to typewriting.

12 I FURTHER CERTIFY that I am not a relative
13 or Attorney of either party nor in any manner
14 interested in the event of this action.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and seal of office at Dayton, Ohio, on this
17 11th day of November, 2005.

18
19 Kathy S. Wysong / RPR
20 KATHY S. WYSONG, RPR
21 NOTARY PUBLIC, STATE OF OHIO
22 My commission expires 12-2-2008
23
24
25